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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

JUL - 9 2004

Federal Communications Commission  
Office of Secretary

In the Matter of	)	
Amendment of Section 73.202(b)	)	MB Docket No. 04-134
Table of Allotments,	)	
FM Broadcast Stations.	)	RM-10948
(Channel 280C, Toquerville, Utah)	)	

**SUPPLEMENTAL COMMENTS OF**  
**BONNEVILLE INTERNATIONAL CORPORATION**

**I. INTRODUCTION.**

Bonneville International Corporation ("Bonneville")<sup>1</sup> hereby submits these Supplemental Comments in response to the Commission's *Notice of Proposed Rulemaking* released April 19, 2004 ("*Toquerville Notice*").<sup>2</sup> These Supplemental Comments are being filed to address an interference showing submitted by Calvary Chapel of St. George ("Calvary") in their Reply Comments on June 25, 2004. The interference showing challenges the technical showing submitted by Bonneville in its initial Comments that demonstrates that the above-referenced community can be served by a noncommercial educational FM ("NCE FM") channel, and thus does not require a reservation.<sup>3</sup> The *Calvary Reply* was filed on the last day for filing reply

<sup>1</sup> Bonneville is a diversified media company that operates a full service television station and a number of radio stations in several markets across the country. All of the stations operated by BIC are licensed to a BIC-affiliated company, Bonneville Holding Company.

<sup>2</sup> *In the matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations, (Toquerville, Utah), MB Dckt. No. 04-134, Notice of Proposed Rulemaking, DA 04-1027 (rel. Apr. 19, 2004) ("Toquerville Notice").*

<sup>3</sup> See *Reply Comments of Calvary Chapel of St. George* at 2 (dated July 25, 2004) ("*Calvary Reply*"). The *Calvary Reply* also submits that Bonneville has no standing to oppose the reservation. *Calvary Reply* at 1 (citing *FCC v. Sanders Bros.*, 309 U.S. 470 (1940)). Calvary's reliance on *FCC v. Sanders* for the proposition that Bonneville was required to demonstrate standing to file comments in this proceeding is misplaced. *FCC v. Sanders* concerns standing to file *petitions in application proceedings* not *comments in rulemaking proceedings*. The Commission's rules do not require parties participating in rulemaking proceedings to demonstrate standing to file, nor did the *Toquerville Notice* specify such a requirement. In any event, Bonneville has an interest in applying for the Toquerville allotment when a filing window is opened.

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comments in this proceeding. As such, Bonneville did not have an opportunity to review and address this new technical showing and to provide the Commission with important information relating to that showing. Accordingly, a Motion to Accept Supplemental Comments is being filed concurrently herewith.

## **II. BACKGROUND.**

On June 10, 2004, Bonneville filed Comments responsive to the Commission's *Toquerville Notice* which sought comment on a proposal filed by Calvary to reserve vacant FM channel 280C, Toquerville, Utah for NCE FM use. Bonneville's Comments conclusively rebut the Calvary request to reserve channel 280C in Toquerville, Utah for NCE FM use by demonstrating that noncommercial facilities can be authorized on reserved channel 201 in accordance with the Commission's requirements.<sup>4</sup> On June 25, 2004, Calvary filed Reply Comments disputing that reserved channel 201 could be used to serve Toquerville. Calvary claimed that such a facility would cause prohibitive interference to channel 6 TV facilities in Caliente, Nevada, proposed in a petition for rulemaking to change the table of allotments.

## **III. RESERVED CHANNEL 201 CAN BE AUTHORIZED TO THE COMMUNITY OF TOQUERVILLE, UTAH WITHOUT PRESENTING INTERFERENCE TO TV CHANNEL 6 OPERATIONS.**

Section 73.525 of the Commission's rules requires that applications for new noncommercial FM facilities protect "authorized" channel 6 TV stations.<sup>5</sup> The Caliente, Nevada channel 6 TV facility relied upon by Calvary to dispute the Bonneville rebuttal showing is not an "authorized" channel 6 TV station, but instead is a "proposed channel 6 TV facility" requested in a rulemaking filed on April 27, 2000, by Kaleidoscope Foundation, Inc. ("Kaleidoscope"), former

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<sup>4</sup> See *Bonneville Comments* at Exh. 1.

<sup>5</sup> 47 C.F.R. 73.525(a).

permittee of station KBNY, channel 6, Ely, Nevada.<sup>6</sup> The Commission's rules do not require noncommercial applicants on reserved FM channels to protect petitions for rulemaking involving channel 6 TV facilities.<sup>7</sup> Accordingly, the channel 6 TV facility identified in the *Calvary Reply* is irrelevant to the Commission's consideration of the viability of a reserved channel 201 operation in Toquerville.

In addition, it should be noted that the *Caliente Reallotment Petition* relied upon by Calvary seeks to amend the NTSC table of allotments to delete channel 6 from Ely, Nevada, allot channel 6 to Caliente, Nevada and to modify the KBNY permit to reflect this reallotment.<sup>8</sup> On April 9, 2002, however, the Kaleidoscope permit authorizing the construction of the KBNY channel 6 TV facility in Ely, Nevada (FCC File No. BPET-19970331LN) expired. Bonneville has reviewed the Commission's files and found nothing to suggest that Kaleidoscope undertook any effort to preserve its authority to construct the KBNY channel 6 TV facility authorized in Ely, Nevada. The Commission cannot modify a permit that expired more than two years ago. In this regard, even if the Commission's rules afforded protection to channel 6 TV petitions for rulemaking (which they do not), the *Caliente Reallotment Petition* has been mooted by the expiration of the underlying construction permit to build the existing channel 6 allotment in Ely, Nevada. Accordingly, contrary to Calvary's assertion, for the reasons set forth above, there is no "authorized" channel 6 TV facility in Caliente, Nevada that warrants protection under the Commission's rules.

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<sup>6</sup> See Amendment of 73.606(b) Table of Allotments Television Broadcast Stations (*Vernal and Santaquin, Utah and Ely and Caliente, Nevada*, MM Docket No. 01-323, *Petition for Rulemaking* (dated April 27, 2000) ("*Caliente Reallotment Petition*").

<sup>7</sup> The Commission's rules governing noncommercial FM/TV6 interference criteria differ from commercial FM application interference criteria, where rulemaking petitions receive protection.

<sup>8</sup> This petition was challenged in 2002 as both procedurally and substantively infirm. See *Caliente Reallotment Petition, Comments of Utah Television Stations* (dated Jan. 14, 2002).

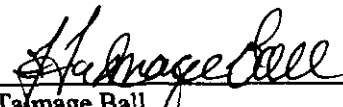
Finally, in any event, a full class C channel 201 facility in Toquerville would not interfere with a single household capable of receiving any Caliente channel 6 TV signal because the two communities are separated by mountains. A Longley rice study undertaken by Bonneville, confirms that the mountains would prevent any actual interference from a channel 201 operation in Toquerville to hypothetical Caliente TV 6 viewers (see attached maps at Exhibit 1). Thus a Caliente TV 6 facility would pose no bar to a NCE FM authorization on a reserved channel in Toquerville.

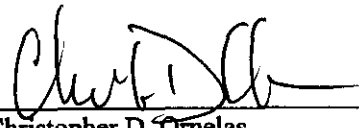
#### IV. CONCLUSION.

For the reasons set forth above, Bonneville maintains that the proposed reservation of Channel 280C, Toquerville, Utah for NCE FM service is unwarranted and should not be adopted.

Respectfully submitted,

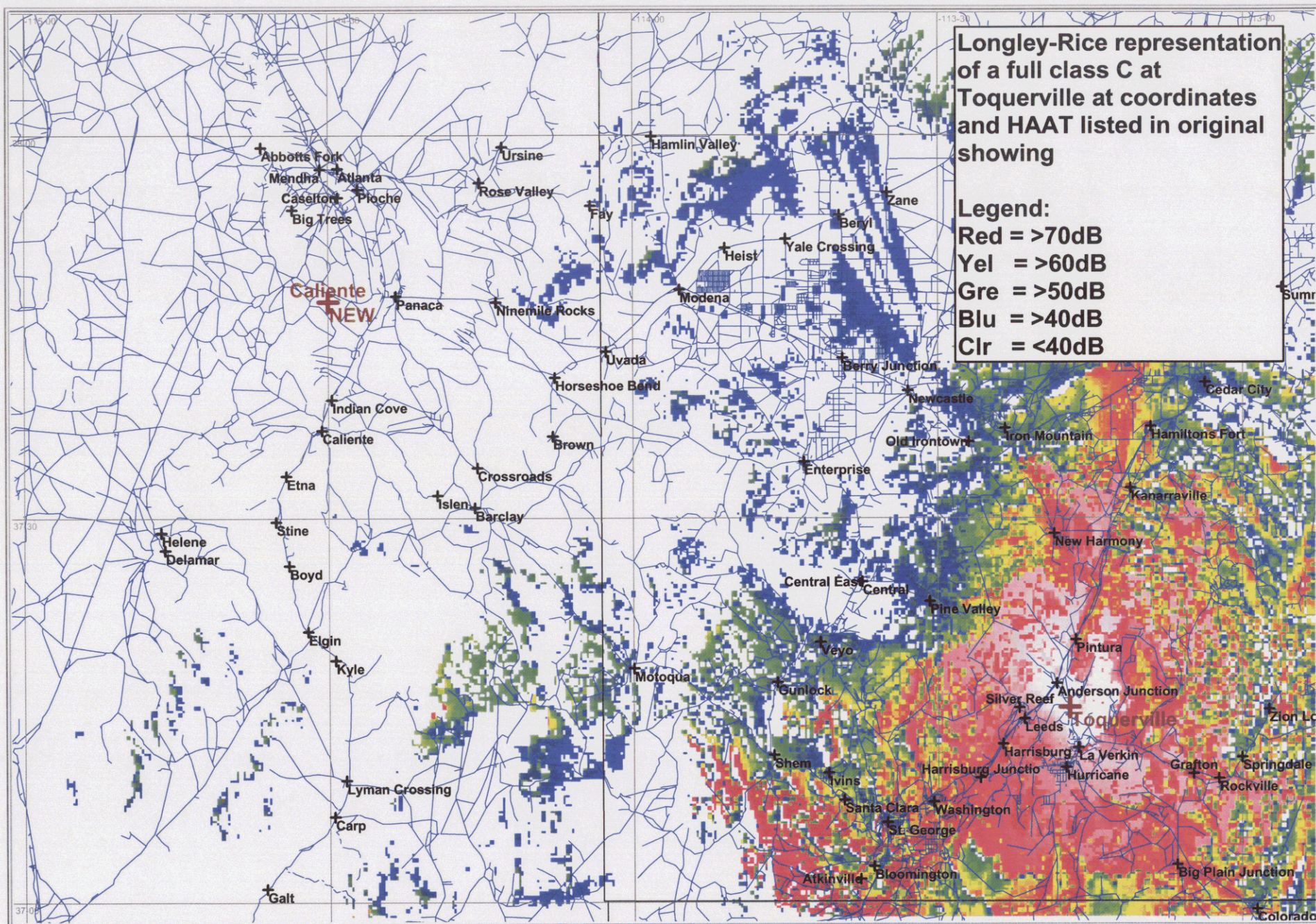
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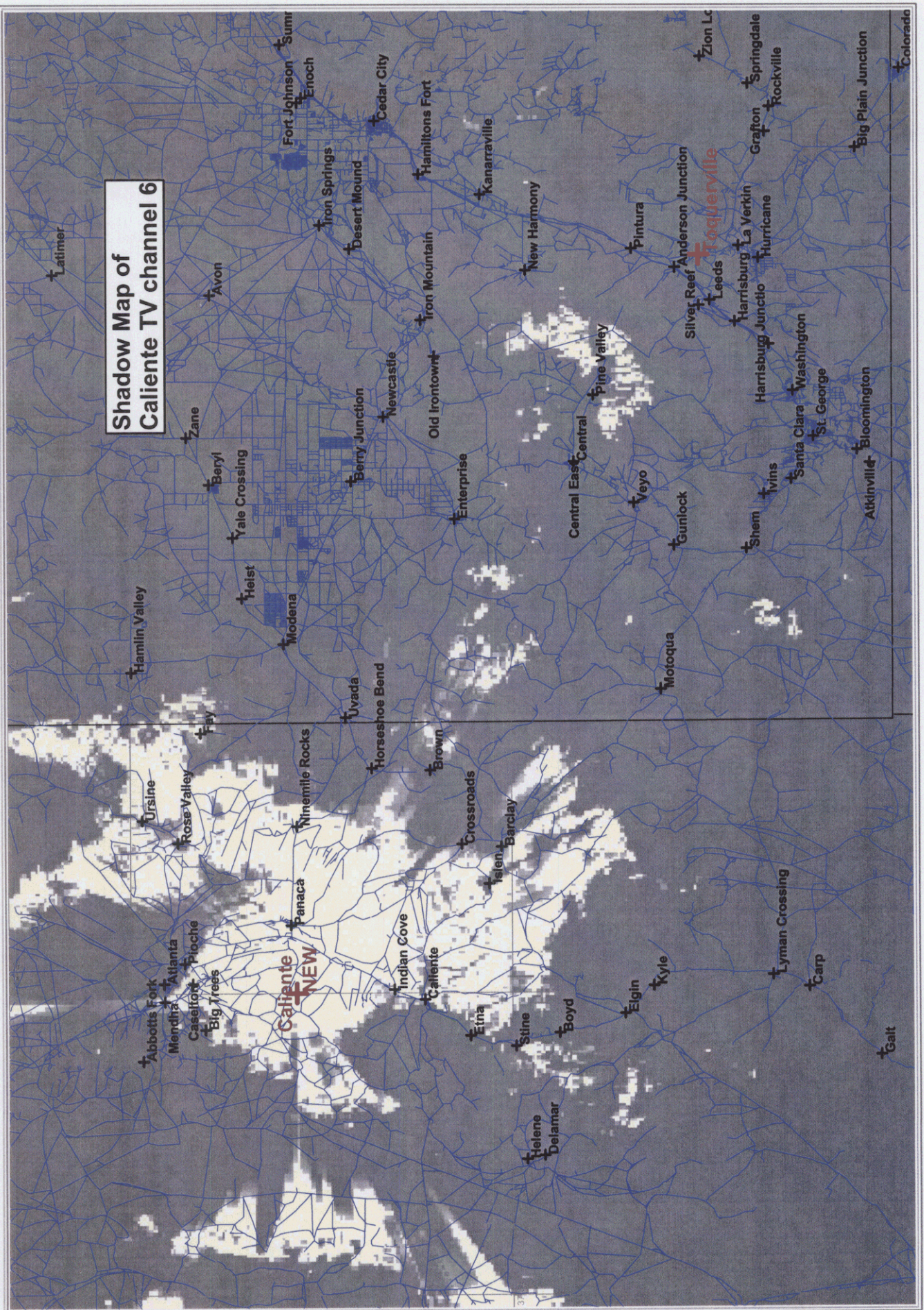
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July 9, 2004

## **EXHIBIT 1**



Shadow Map of  
Caliente TV channel 6



## **CERTIFICATE OF SERVICE**

I, Paula Lewis, do hereby certify that on this 9th day of July 2004, a copy of the foregoing Supplemental Comments was served by first-class mail, postage pre-paid to the following:

David A. O'Connor  
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A handwritten signature in cursive script, reading "Paula Lewis", written over a horizontal line.

Paula Lewis